

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**IN RE METHYL TERTIARY BUTYL ETHER  
PRODUCTS LIABILITY LITIGATION**

**This document relates to:**

*City of New York v. Amerada Hess Corporation, et al.,*  
**No. 04 Civ. 3417 (SAS)**

Master File No. 1:00-1898  
MDL 1358 (SAS)  
M21-88

**REPLY DECLARATION OF JENNIFER KALNINS TEMPLE IN FURTHER SUPPORT  
OF DEFENDANTS' MOTION *IN LIMINE* TO PRECLUDE PLAINTIFF FROM  
OFFERING EVIDENCE OR ARGUMENT CONCERNING ANY POLICY OR  
REQUIREMENT TO TREAT MTBE CONTAMINATION TO ANY LEVEL OTHER  
THAN THE NEW YORK STATE MAXIMUM CONTAMINANT LEVEL**

Jennifer Kalnins Temple, an attorney duly admitted to practice law in the State of New York and in this Court, hereby declares under penalty of perjury:

1. I am an attorney with the law firm of McDermott Will & Emery LLP, counsel for the Exxon Mobil Defendants in the above-captioned matter. I submit this Declaration in support of ExxonMobil's Reply Memorandum of Law in Support of Defendants' Motion *in Limine* to Preclude Plaintiff From Offering Evidence or Argument Concerning Any Policy or Requirement to Treat MTBE Contamination to Any Level Other than the New York State Maximum Contaminant Level (hereinafter "Reply"). This Declaration authenticates the exhibits attached hereto and relied on in support of the Reply. In accordance with this Court's Individual Rules and Procedures, the exhibits have been excerpted to include only the relevant material. Copies of the exhibits appended hereto were made at my direction on or around June 2, 2009.

2. Attached hereto as Exhibit 1 is a true and correct copy of excerpts from the Deposition of Steven Schindler (Apr. 23, 2009).

3. Attached hereto as Exhibit 2 is a true and correct copy of excerpts from the Deposition of Marnie Bell (Apr. 20-21, 2009).

Dated: New York, NY  
June 2, 2009

Respectfully submitted,

  
Jennifer Kalnins Temple

## **EXHIBIT 1**

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW JERSEY

- - -

IN RE:

Methyl Tertiary Butyl : MDL NO. 1358 (SAS)  
Ether ("MTBE") :  
Products Liability :  
Litigation :

In Re:

City of New York

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CONFIDENTIAL (Per 2004 MDL 1358 Order)

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April 23, 2009

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Videotaped Transcript of the  
deposition of STEVEN SCHINDLER, called for  
Oral Examination in the above-captioned  
matter, said deposition taken pursuant to  
Federal Court Rules, by and before DANA N.  
SREBRENICK, a Federally-Approved Certified  
Realtime and Certified Livenote Reporter, and  
Notary Public for the State of New York, at  
the offices of McDermott, Will & Emery, LLP,  
340 Madison Avenue, New York, New York,  
commencing at 10:00 a.m.

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deps@golkow.com

JOB NO. 14751

1 Q. And who provided these  
2 documents to you?

3 A. The New York City Law  
4 Department provided most of these documents.  
5 Some of these I already had in my possession.

6 Q. Was that the Ten States  
7 Standards? Which documents did you have in  
8 your possession already?

9 A. I had in my possession already  
10 the Water Quality Annual Report for 2007 and  
11 the document referred to as Graph Figure 1-A  
12 Groundwater Well Daily Average Pumping  
13 History.

14 The other documents were  
15 provided by the law department.

16 Q. And who gave you the  
17 Recommended Standards for Water Works, 2003?

18 A. Bill did.

19 Q. And when did he give that  
20 document to you?

21 A. That was last night.

22 Q. Had you seen it before?

23 A. No.

24 Q. Is it a document that you

1 A. Yes.

2 Q. Do you have any understanding  
3 of what is meant in this memo by the phrase  
4 "nondetectable"?

5 A. Yes.

6 Q. And what does it mean?

7 A. My understanding that it's  
8 referring to at levels below the limit of  
9 detection based on the current technology to  
10 be able to detect.

11 Q. And we talked about previously  
12 your opinion as to whether or not it's  
13 possible to deliver water to customers  
14 without detectable levels of contaminants,  
15 correct?

16 A. Yes.

17 Q. And you agreed that it isn't  
18 possible to deliver water to consumers with  
19 zero contaminants, correct?

20 A. Yes.

21 Q. With regard to the reference  
22 here to stakeholders, do you know who the  
23 stakeholders are that's being referred to  
24 here?

1 in the future so that it will be provided to  
2 consumers at the City at the same level of  
3 quality as the Cat/Del consumers receive?

4 MR. PLACHE: Objection.

5 You can answer.

6 A. Yeah, it's my understanding  
7 that the goal is to achieve less than one  
8 part per billion of MTBE.

9 Q. And as the Director of Drinking  
10 Water Quality, is it your understanding that  
11 consumers in the Cat/Del system receive water  
12 with less than one part per billion --

13 A. Yes.

14 Q. -- of MTBE consistently?

15 A. Yes.

16 Q. And what do you base that?

17 A. I base that on the water  
18 quality data that we generate on an annual  
19 basis and that we report in our Annual Water  
20 Quality Reports.

21 Q. Okay. We'll take a look at  
22 some of those later this afternoon.

23 Do you know whether the cost --  
24 on the second page of this exhibit, the plan

1 is the maximum detection for 1997 4.8 parts  
2 per billion?

3 A. Yes.

4 Q. And the max for the groundwater  
5 system is 14.9 parts per billion, correct?

6 A. Yes.

7 Q. And at this time, the MCL for  
8 MTBE was 50 micrograms per liter?

9 A. That's correct.

10 Q. Do you recall your testimony  
11 earlier today that it was your recollection  
12 that MTBE hadn't been distributed to  
13 customers from either the Catskill or Croton  
14 distribution?

15 A. Yes.

16 Q. And so this would show that, in  
17 fact, MTBE was distributed from these surface  
18 water supply systems, correct?

19 A. Yeah, back in 1997.

20 Q. Okay. I'd like to look at 1998  
21 next.

22 (Exhibit Schindler 13, 1998

23 Data Table for the Consumer

24 Confidence Report for the City of New



1 A. Yes.

2 Q. And do you know if any press  
3 release was issued to the public in  
4 connection with these well removals?

5 A. I don't know.

6 Q. And then on page 12, there are  
7 results for MTBE that year. Can you read the  
8 maximum MTBE detected in the  
9 Catskill/Delaware system that year?

10 A. Yeah, three parts per billion.

11 Q. And the maximum detected in the  
12 Croton system that year?

13 A. 0.6.

14 Q. And then for the groundwater,  
15 is it 10.1?

16 A. Yes.

17 Q. And at that time, was a 10.1  
18 detection of MTBE in the groundwater in 1999  
19 considered a violation of the MCL?

20 A. No. The MCL at the time,  
21 according to this table, is 50 parts per  
22 billion.

23 Q. And is there any indication  
24 that a well was taken out of service because

1 of that detection of 10.1 parts per billion  
2 of MTBE? There's no footnote, right?

3 A. I don't see a footnote, no.

4 (Exhibit Schindler 15, 2000  
5 Consumer Confidence Report, marked  
6 for identification.)

7 MS. KALNINS-TEMPLE: I've  
8 marked as Exhibit 15 what I believe  
9 is the 2000 drinking water quality  
10 Report for the City.

11 Q. Do you recognize this document  
12 as the City's Consumer Confidence Report from  
13 the year 2000?

14 A. Yes.

15 Q. And on page 12, there's an  
16 entry for MTBE. Can you tell in the year  
17 2000 what the maximum detection of MTBE was  
18 measured in the Catskill/Delaware system that  
19 year?

20 A. 3.9 parts per billion, or  
21 micrograms per liter.

22 Q. And -- okay.

23 And the maximum detection in  
24 the groundwater system was 10.4 parts per

1 billion?

2 A. That's correct.

3 Q. And the MCL was 50 that year,  
4 correct?

5 A. Yes.

6 Q. Okay.

7 (Exhibit Schindler 16, 2001  
8 Consumer Confidence Report, marked  
9 for identification.)

10 Q. I've marked as Exhibit 16 what  
11 I believe is the 2001 annual Consumer  
12 Confidence Report for the City of New York.  
13 Do you recognize this document as the City's  
14 Consumer Confidence Report from 2001?

15 A. Yes.

16 Q. And looking at page 12, was  
17 MTBE detected in the Catskill/Delaware system  
18 that year?

19 A. Yes.

20 Q. And what level was it detected  
21 at?

22 A. 14.

23 Q. That was the maximum, correct?

24 A. Yes.

## **EXHIBIT 2**

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

- - -

IN RE: METHYL : Master File  
TERTIARY BUTYL ETHER : C.A. No.  
("MTBE") PRODUCTS : 1:00-1898  
LIABILITY LITIGATION :  
\_\_\_\_\_ : MDL 1358 (SAS)

This document relates :  
to the following : M21-88  
cases: :

City of New York v. :  
Amerada Hess Corp., et :  
al, 04 Civ. 3417 :

- - -

April 20, 2009

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Videotaped expert  
deposition of MARNIE A. BELL, P.E., taken  
pursuant to notice, was held at the law  
offices of McDermott Will & Emery LLP,  
340 Madison Avenue, New York, New York,  
beginning at 10:01 a.m., on the above  
date, before Kimberly A. Cahill, a  
Federally Approved Registered Merit  
Reporter and Notary Public.

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1 Standards for Water Works, 2003 edition.

2 Q. And for the record, it's  
3 been Bates stamped NYC-BEL-REB, which I  
4 assume that means Bell rebuttal, 1303.

5 Was this part of your file  
6 in the work that you did in this case?

7 A. Yes.

8 Q. Can you point to us where in  
9 that document it refers to the principle  
10 that MTBE should be treated to nondetect  
11 levels?

12 A. Well, it doesn't  
13 specifically say MTBE. There's a policy  
14 statement on the control of organic  
15 contamination --

16 Q. And where are you looking?

17 A. -- on page Roman numeral 12,  
18 where it says, "Where treatment is  
19 proposed, best available technology shall  
20 be employed to reduce organic  
21 contaminants to the lowest practical  
22 levels."

23 Q. And is the lowest practical  
24 level defined?

1           A.     No, it's not defined in the  
2 code.

3           Q.     And do you -- to your  
4 understanding, does it include the  
5 concept of what is practical or feasible  
6 or economical?

7           A.     To my understanding, it  
8 would include what was technologically  
9 feasible.

10          Q.     And are you aware of any  
11 regulations from the New York State  
12 Department of Health that requires the  
13 treatment of MTBE to less than .5 parts  
14 per billion?

15                   MS. AMRON: I think that's  
16           been asked and answered.

17                   Answer again.

18                   THE WITNESS: I'm not aware  
19           of any specific regulation that  
20           culls out that MTBE must be  
21           treated to less than .5 micrograms  
22           per liter.

23 BY MS. KALNINS TEMPLE:

24          Q.     And what about for 3 parts

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

- - -

IN RE: METHYL : Master File  
TERTIARY BUTYL ETHER : C.A. No.  
("MTBE") PRODUCTS : 1:00-1898  
LIABILITY LITIGATION :

: MDL 1358 (SAS)

This document relates :  
to the following : M21-88  
cases: :

:

City of New York v. :  
Amerada Hess Corp., et :  
al, 04 Civ. 3417 :

- - -

April 21, 2009

- - -

Continued videotaped  
expert deposition of MARNIE A. BELL, P.E.,  
taken pursuant to notice, was held at the  
law offices of McDermott Will & Emery  
LLP, 340 Madison Avenue, New York, New  
York, beginning at 9:58 a.m., on the  
above date, before Kimberly A. Cahill, a  
Federally Approved Registered Merit  
Reporter and Notary Public.

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1           A.       I'm not sure of that. In my  
2 opinion, that level must incorporate  
3 what's technologically feasible. Costs  
4 must also be considered as well.

5           Q.       Yesterday -- and I jotted  
6 this down and I may have misheard you.

7                   Did I hear you testify  
8 yesterday that you're aware of plans by  
9 the City to repair some of the  
10 groundwater wells, apart from station 6?

11          A.       Yes, I did indicate that.

12          Q.       What repairs have you heard  
13 about with respect to groundwater wells?

14          A.       That's probably something  
15 better posed for the DEP, but my general  
16 understanding is, they are trying to make  
17 repairs at some of the wells.

18                   I'm not sure of the details,  
19 whether they're mechanical or electrical,  
20 but they are trying to make repairs in  
21 order to get the wells either service  
22 ready or potentially back into service.

23          Q.       Do you know any specific  
24 wells that are under consideration as